

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JERRY MUNOZ DURAN,

Petitioner,

vs.

STEVE SINCLAIR,

Respondent.

NO. CV-09-5036-CI

ORDER ADOPTING REPORT AND
RECOMMENDATION

Magistrate Judge Imbrogno filed a Report and Recommendation on May 4, 2010, recommending all claims in Mr. Duran's Petition for Writ of Habeas Corpus be dismissed. Objections to the Report and Recommendation were due by May 18, 2010. (Ct. Rec. 31.) There being no objections to the Report and Recommendation, the court **ADOPTS** the Report and Recommendation.

Because this is the Court's final order in this matter, the December 1, 2009 amendments to Rule 11(a) of the Federal Rules Governing Section 2254 Cases require the Court to determine in this Order whether a certificate of appealability should issue. The Court finds additional briefing on this issue unnecessary.

The Antiterrorism and Effective Death Penalty Act of 1996 requires a habeas petitioner appealing the denial of a 28 U.S.C. § 2254 to obtain a certificate of appealability. 28 U.S.C. § 2253(c). A

1 court may issue a certificate of appealability only if the "applicant
2 has made a substantial showing of the denial of a constitutional
3 right." 28 U.S.C. § 2253(c)(2). A petitioner must show that
4 "reasonable jurists could debate whether . . . the petition should
5 have been resolved in a different manner or that the issues presented
6 were adequate to deserve encouragement to proceed further." *Slack v.*
7 *McDaniel*, 529 U.S. 473, 484 (2000) (internal quotations omitted). The
8 decision to issue a certificate of appealability turns not on the
9 court's assessment of the applicant's chances for success on appeal,
10 but whether the appeal would raise material and debatable questions.
11 See *Miller-El v. Cockrell*, 537 U.S. 322, 342 (2003).

12 The Court finds that Petitioner's claims do not justify the
13 issuance of a certificate of appealability. Petitioner has not made a
14 substantial showing of the denial of a constitutional right.

15 Accordingly, IT IS HEREBY ORDERED:

16 1. Respondent's Motion to Dismiss (Ct. Rec. 19) is **GRANTED**.

17 2. Petitioner's Petition for Writ of Habeas Corpus (Ct. Rec. 1,
18 7) is **DISMISSED WITH PREJUDICE**.

19 3. The Court declines to issue a Certificate of Appealability.

20 **IT IS SO ORDERED.** The District Court Executive shall forward
21 copies of this Order to Petitioner and counsel for Respondent. The
22 file shall be closed and judgment entered for Respondent.

23
24 s/Robert H. Whaley
25 ROBERT H. WHALEY
26 United States District Judge

27 Q:\CIVIL\2009\Duran\orderadopt.RR.wpd

28 ORDER ADOPTING REPORT AND RECOMMENDATION - 2